

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

TDS Metrocom, Inc.)	
Petition for Arbitration of Interconnection Rates,)	
Terms and Conditions and Related Arrangements)	Docket 01-0338
With Illinois Bell Telephone Company d/b/a)	
Ameritech Illinois Pursuant to Section 252(b))	
Of the Telecommunications Act of 1996)	

**BRIEF ON EXCEPTIONS OF TDS METROCOM, INC. TO THE
HEARING EXAMINERS' PROPOSED ORDER**

I. SUMMARY OF TDS METROCOM'S EXCEPTIONS

TDS Metrocom takes exception to the Hearing Examiner's Proposed Order ("HEPO") on four issues. On Issues No. 5 and No. 25 (TDS-32 and TDS-107), TDS Metrocom asks the Commission to reach a different conclusion than that reached by the Hearing Examiner, in order to comply with the requirements of Telecommunications Act of 1996 ("the Act") to provide terms which are just and reasonable, and to provide for terms that advance the Act's primary goal of promoting competition. On Issue No. 27 (Issue TDS-119) TDS Metrocom requests that the decision of the Hearing Examiner be modified so that the language ordered matches the reasoning given, in that the decision refers to the decision on Issue No. 26 (TDS-112), but the language ordered is not consistent with that reference. On Issue No. 29 (TDS-124) TDS Metrocom requests that the order be clarified so that the language to be included in the agreement as a result of the Hearing Examiner's reasoning and decision will be explicitly set forth.

II. SPECIFIC EXCEPTIONS AND ARGUMENT

Issue No. 5 (TDS-32)

Should the agreement provide for processes related to ordering of UNEs as shown?

Appendix UNE Sections 2.11-2.18

DISPUTED LANGUAGE:

APPENDIX UNE–
SBC13STATE

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- 2.11 TDS may order from SBC-Ameritech multiple individual Network Elements on a single order without the need to have TDS send an order for each such *Unbundled* Network Element if such *Unbundled* Network Elements are (i) for a single type of service, (ii) for a single location, and (iii) for the same account and TDS provides on the order the same detail as required when such *Unbundled* Network Elements are ordered individually.
- 2.12 SBC-Ameritech shall provide a Single Point of Contact ("SPOC") for purposes of problem resolution or escalation at each SBC-Ameritech ordering and provisioning center including but not limited to: 1) the Local Service Center "LSC"; and 2) the Local Operations Center "LOC; and 3) Hi-Cap center. Each SPOC shall be trained to answer questions and resolve problems in connection with the provisioning, repair and maintenance of *Unbundled* Network Elements. For each SPOC, TDS will be provided with telephone number and/or pager. SBC-Ameritech shall provide an up to date escalation list via account management or on SBC-Ameritech's CLEC Online website to be used when the SPOC is not responsive or unable to resolve the issue. Notice of any changes to the escalation list will be sent according to the notice provisions of this Agreement.
- 2.13 SBC-Ameritech will provide TDS with a Firm Order Confirmation (FOC) for each order in accordance with the intervals set out in the performance measures, Appendix PM. If SBC-Ameritech encounters a circumstance where it is aware that it cannot meet the above requirements, SBC-Ameritech must provide notice to TDS, including the expected FOC interval and the expected time until normal intervals will be restored.

Ameritech must update this information as the situation changes. The FOC will be provided in accordance with OBF guidelines and will contain the must contain an enumeration of TDS' ordered Network Elements features, options, physical Interconnection, quantity, and SBC-Ameritech commitment date for order completion ("Committed Due Date"), which Committed Due Date shall be established on a nondiscriminatory basis with respect to installation dates for comparable orders at such time. If FOCs are delayed, TDS will utilize the SPOC described in 2.12 for information and resolution. If TDS escalates one or more late FOCs, Ameritech's SPOC will resolve and provide FOCs for the orders within 12 hours.

- 2.14 SBC-Ameritech will provide TDS electronically, *via OSS*, with a completed order confirmation per order in accordance with the intervals set out in the performance measures, Appendix PM.
- 2.15 As soon as identified but no later than 24 hours after submission, Ameritech shall provide notification electronically of TDS orders that have been submitted incompletely or incorrectly and therefore cannot be processed. The notification shall list all corrections or changes that need to be made to make the order ready for processing.
- 2.16 If Ameritech's Committed Due Dates are in jeopardy of not being met due to facilities availability, Ameritech will comply with the Facilities Modifications process in Accessible Letter CLEC AM00-153, and the modifications thereto as reflected in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160 or the properly implemented successor thereto.
- 2.17 Except for orders covered by the facilities modification process as provided in Section 2.16, no later than 72 hours prior to the Committed Due Date, or as soon as identified, SBC-Ameritech shall provide notification electronically of any instances when Ameritech's Committed Due Dates are in jeopardy of not being met by SBC-Ameritech on any element or feature contained in any order for a *Unbundled Network Element*. Ameritech shall indicate its new Committed Due Date within 24 hours of the notice of jeopardy.
- 2.18 Testing will be as follows:
 - 2.18.1 Ameritech will conduct a dial tone/ANI test on the day of cut, as a matter of course. In addition, for those CLECs who desire, Ameritech will also conduct a dial tone/ANI test on DD-2. Ameritech recommends further collaboration to define the new routine process.

- 2.18.2 Ameritech will not charge CLECs for dial tone/ANI testing if done on a routine basis on DD-2 and /or on the date of cut. In addition, Ameritech will provide a dial tone/ANI test on a separate date as requested by the CLEC, subject to applicable charges.
- 2.18.3 Ameritech will engage in further collaboration to address the timing of notice if a dial tone/ANI test fails on DD-2 due to a CLEC trouble. Subject to the outcome of the collaborative, Ameritech will provide to the CLECs notice of a failed dial tone/ANI test conducted on DD-2 no later than 4 business hours after such test or by 10 am on DD-1, whichever occurs first. In addition, Ameritech will discuss potential procedures in the event a failure is found during such dial tone/ANI test performed on DD-2. However, in any event if a dial tone/ANI test is conducted on DD-2 Ameritech will perform another dial tone/ANI test as a matter of course on the date of cutover.
- 2.18.4 Ameritech will provide CLECs with status updates every two hours until the order is completed for all hot cuts that fail at the time of the originally scheduled cutover. In the case where trouble is reported after order completion, status will be available via Electronic Bonded Trouble Administration (EBTA) on a real-time basis.
- 2.18.5 Ameritech will implement “flags” for desired frame due times for Coordinated Hot Cuts (CHC) consistent with industry guidelines, if and when such flags are included in such guidelines upon a request from a CLEC and consistent with its then current Change Management Policy (CMP).
- 2.18.6 Ameritech will test and implement a “non-coordinated” frame due time hot cut process. Ameritech will continue to collaborate to define methods and procedures necessary for such process. Such discussions will begin in early December and will be concluded within 30-60 days. At the conclusion of such discussions such parties will file a joint report advising the Commission of all resolved and unresolved issues.

ARGUMENT:

The HEPO states in pertinent part:

Sections 2.13, 2.14, 2.15, and 2.18 are sections that contain issues that the Commission considered in its generic docket, 00-0592 (January 24, 2001). To the extent these proposed sections would deviate from the OSS proceeding, the Commission declines to require sections that would be inconsistent with the order in 00-0592.

Sections 16 and 17 relate to the FMOD process that has been discussed at Issue No. 3 (TDS-28). The Commission has adopted the TDS language for the FMOD process and the TDS requested language in Sections 16 and 17 appears unnecessary.

While the HEPO states that the subjects of Sections 2.13, 2.14, 2.15, and 2.18 were considered in the OSS proceeding, there is absolutely no indication as to where in that docket these issues were addressed. Likewise, nowhere in its brief did Ameritech cite to any portion of the order that directly addressed these issues. In addition, no specific conflicts were cited in the testimony of the Ameritech witness on this subject. . Neither the HEPO nor Ameritech cites to a page number, a section, subsection, a paragraph, subparagraph, sentence, line or word from Docket 00-0592 that is contradicted by the language proposed by TDS Metrocom. The reason for this is obvious - IT JUST ISN'T SO! The language requested by TDS Metrocom was not directly addressed by the OSS proceeding, which leaves us with the following from the HEPO:

To the extent these proposed sections *would* deviate from the OSS proceeding, the Commission declines to require sections that *would be inconsistent* with the order in 00-0592. (emphasis added)

What is not addressed by Ameritech nor in the HEPO is why the Commission should not require sections to the extent they do *not* deviate from the OSS proceeding and why it should not require sections that are entirely *consistent* with the order in Docket 00-0592. This question must be answered because the record in this matter does not show any way in which the language of these sections as proposed by TDS Metrocom conflicts with the outcome of the OSS

proceeding. As such, the Commission should address these issues with regard to whether they are just and reasonable and promote competition. Seen in that light it is no surprise that Ameritech opposes these sections. They do not dispute that these would be provisions that would improve the provisioning of services and UNEs to CLECs such as TDS Metrocom. Since the only ground for refusing these provisions has been shown to be in error (the provisions do not conflict with the OSS proceeding), the Commission should order these provisions into the agreement to provide for an agreement that is just and reasonable and promotes competition.

This is especially true with respect to Section 2.18, which even Ameritech agrees is an accurate statement of the agreement that Ameritech has made concerning Hot Cut testing. As the Hearing Examiner stated with respect to the FMOD, "it is inconsistent to have an FMOD policy that covers the five state area and is available to CLECs that wish to take advantage of its provisions and not to include such a policy in an interconnection agreement." It is equally inconsistent to have a testing process that has been agreed to, and yet not include the language setting forth that process in the agreement.

With respect to Sections 2.16 and 2.17, the reasoning applied by the Hearing Examiner in deciding Issue No. 3 (TDS-28) should be applied here as well, "it is inconsistent to have an FMOD policy that covers the five state area and is available to CLECs that wish to take advantage of its provisions and not to

include such a policy in an interconnection agreement." It is not sufficient just to include the FMOD in the agreement *somewhere*. It would be inconsistent to allow the FMOD process to be included in the agreement, but not include references to that FMOD process at the points in the agreement where the process is applicable. It has not been seriously contended that these sections expand the FMOD process or change it in any way. Nor, according to the HEPO, does it appear that reference to the FMOD process at this point in the agreement is improper. The Hearing Examiner merely notes that, "the TDS Metrocom requested language in Sections 16 and 17 appears unnecessary." If the history of dealing with Ameritech on issues related to competition has shown anything, it is that it is often necessary to state and restate what should be obvious. In order to provide for terms that are just and reasonable, and to promote competition, the language proposed by TDS Metrocom should be ordered for these two sections.

Issue No. 25 (TDS-107)

Is TDS Metrocom entitled to charge reciprocal compensation for terminating FX calls?

Reciprocal Compensation Section 2.7

DISPUTED LANGUAGE:

APPENDIX RECIPROCAL COMPENSATION-**SBC-13STATE**

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2.7 Calls delivered to numbers that are assigned to an exchange within a common mandatory local calling area but where the receiving party is physically located outside the common mandatory local calling area of the exchange to which the number is assigned are either Feature Group A (FGA) or Foreign Exchange (FX) and are not Local Calls for intercarrier compensation and are not subject to local reciprocal compensation.

ARGUMENT:

The HEPO notes that the Commission has previously considered this issue in the Level 3 arbitration. It appears that this decision was based on an erroneous factual finding which has been corrected by the record in this arbitration. In Level 3, the Commission found, "The virtual NXX or FX call is local only from the caller's perspective, and NOT from any other standpoint." As was noted in the testimony of TDS Metrocom witness Jackson, the entire reason for having FX service is that a call, which might otherwise originate outside of a local calling area, should appear to be for all intents and purposes a local call. Additionally, from the standpoint of the network, these calls look exactly like local calls being routed between Ameritech Illinois and TDS Metrocom local switches. (Exhibit 5,

Jackson Testimony, p. 18) Thus these calls appear local from every standpoint, not just that of the caller. This is clearly a distinction between the current record and the Level 3 decision.

There are additional practical reasons to reject the language proposed by Ameritech. There is nothing in the record to refute the contention of TDS Metrocom that it is not practical to segregate FX traffic, especially after the parties have gone to so much trouble to make the traffic appear to the network as local traffic. While it is true that much of TDS Metrocom's attention has been focussed on the scenario where Ameritech FX customers are calling to TDS Metrocom customers, (based in no small part on the now resolved dispute over Issue TDS-219), TDS Metrocom's position is the same no matter what direction the traffic is flowing. While Ameritech seems to make it sound easy in its brief, Ameritech does not provide anything in the record to rebut the testimony of TDS Metrocom witness Jackson that identifying and segregating traffic that may be intended for an FX customer would be an expensive and manual process. (Tr. p. 222, lines 3-22; p. 223, line 17).

Further, the Commission in the Level 3 arbitration noted that the Texas PUC agreed with the position that FX traffic should not be subject to reciprocal compensation. On the other hand, TDS Metrocom directs the Commission's attention to the decision of the Michigan PSC on the same issue. In determining

that reciprocal compensation should be paid for FX calls, the Michigan Commission found:

The Commission rejects the proposal to reclassify FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call. ***As a matter of historical convention, the routing of that call, i.e., whether or not it crosses exchange boundaries, has not been equated with its rating, i.e., whether local or toll.*** Moreover, the discretion that CLECs exercise in designing their local calling areas is a competitive innovation that enables them to provide valuable alternatives to an ILEC's traditional service. The Commission finds no reason to change these standards, particularly if the end result would be an unnecessary restriction on the services that customers want and need. Moreover, the application does not address how the carriers would make the necessary changes to their billing systems or whether the changes would be technically feasible at an affordable cost for both Ameritech Michigan and the CLECs. (Emphasis added)

In the Matter of Application of Ameritech Michigan to Revise its Reciprocal Rate Structure and to Exempt Foreign Exchange Service from Payment of Reciprocal Compensation, Case No. U-12696.

The Michigan Commission directly addresses the very issues raised by TDS Metrocom which are essentially un-rebutted by Ameritech: The problem of segregating the traffic in a technically feasible and cost-effective way, and the fact that there is no practical difference in the costs to the carriers for terminating FX

versus other "local" calls. The reasoning of the Michigan Commission is persuasive on this issue. Therefore, TDS Metrocom requests that this Commission delete the language as requested by TDS Metrocom.

Issue No. 27 (TDS-119)

What should be the compensation for termination of intercompany traffic for intrastate intraLATA toll service traffic?

Appendix Reciprocal Compensation Section 11.1

DISPUTED LANGUAGE:

APPENDIX RECIPROCAL COMPENSATION- **SBC-13STATE**
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- 11.1 For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will *be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable*, as set forth in each Party's Intrastate Access Service Tariff, *but not to exceed the compensation contained in an the ILEC's tariff in whose exchange area the End User is located*. For interstate intraLATA intercompany toll service traffic, compensation for termination of intercompany traffic will *be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge*, as set forth in each Party's interstate Access Service Tariff, *but not to exceed the compensation contained in the ILEC's tariff in whose exchange area the End User is located*.

ARGUMENT:

While the HEPO states that it is following the reasoning of Issue TDS-112 in reaching its decision, the Ameritech language ordered for this section is contrary to that reasoning. In Issue TDS-112 the Commission specifically allowed TDS Metrocom to provide evidence to support a cost based rate for access, and after providing such evidence to charge that cost based rate. Here, although the HEPO says the same reasoning should apply, the language ordered does not allow

for TDS Metrocom to document and charge a cost based rate. In order to provide for true consistency between the two issues, the language for Section 11.1 should read (with the additional language underlined and bold):

For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, but not to exceed the compensation contained in an the ILEC's tariff in whose exchange area the End User is located **until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located.** For interstate intraLATA intercompany toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff, but not to exceed the compensation contained in the ILEC's tariff in whose exchange area the End User is located **until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located.**

In fact, this is exactly in line with the language ordered by the Wisconsin Panel, which also ordered language similar to that ordered by the Hearing Examiner for Issue TDS-112. Further by adding the language related to documenting a cost based rate, the language ordered for this issue is truly consistent with the Hearing Officer's statement that "Since the parties have agreed that this issue is essentially the same issue as TDS-112, the rationale set out above is equally applicable for this issue." This will also prevent the bizarre result of

having TDS Metrocom provide a subsidy to Ameritech by being forced to provide services below cost.

Issue No. 29 (TDS-124)

Should TDS Metrocom be responsible for paying charges to Ameritech every time there is any inaccurate order?

Appendix OSS Section 3.4

DISPUTED LANGUAGE:

APPENDIX OSS-RESALE & UNE-**SBC-13 STATE**

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- 3.4 By utilizing electronic interfaces to access OSS functions, CLEC agrees to perform accurate and correct ordering as it relates to the application of Resale rates and charges, subject to the terms of this Agreement and applicable tariffs dependent on region of operation. In addition, CLEC agrees to perform accurate and correct ordering as it relates to **SBC-13STATE**'s UNE rates and charges, dependent upon region of operation, pursuant to the terms of this Agreement. CLEC is also responsible for all actions of its employees using any of **SBC-13STATE**'s OSS systems. As such, CLEC agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by **SBC-13STATE** *caused by any and all* in attempting to provision orders, even if such orders are later discovered to be inaccurate due to inaccurate ordering or usage of the OSS by CLEC, if such costs are not already recovered through other charges assessed by **SBC-13STATE** to CLEC. If inaccurate orders are discovered prior to Ameritech taking actions to provision the orders, no additional charges will apply. In addition, **SBC-13STATE** retains the right to audit all activities by CLEC using any **SBC-13STATE** OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed prior to or in conjunction with the execution of this Agreement.

ARGUMENT:

The HEPO clearly agrees with the position stated by TDS Metrocom, and with the language as proposed by TDS Metrocom. The HEPO states:

The Commission agrees that Ameritech's proposal is premature. If work requested by TDS proves to be unnecessary because the TDS request was inaccurate, TDS should compensate Ameritech. If, on the other, one source of an inaccurate request is based on inaccurate Ameritech information, Ameritech should not be entitled to recover.

However, the HEPO does not explicitly state that the language proposed by TDS Metrocom is ordered for this section of the agreement. TDS Metrocom requests that the HEPO be clarified by explicitly ordering the TDS Metrocom language for this section.

III. SPECIFIC PROPOSED LANGUAGE CHANGES TO THE HEPO

Issue 5 (Issue TDS-32)

TDS Metrocom requests that the HEPO on this issue be modified as shown below:

D. Commission Analysis and Conclusion

The Commission notes that one area of disagreement in Section 2.11 is whether the provision should say “Unbundled Network Elements” or “Network Elements.” Taking an “easier” issue to resolve, the Commission agrees that the language should be “Unbundled Network Elements” as that is what Ameritech has to provide.

The Commission further concludes that in Section 2.12, Ameritech does not have to provide a Single Point of Contact (“SPOC”) for Hi-Cap Centers. There has been no showing that this is either necessary or will provide more prompt attention than other performance measures elsewhere in the agreement.

~~Sections 2.13, 2.14, 2.15, and 2.18 are sections that contain issues that the Commission considered in its generic docket, 00-0592 (January 24, 2001). To the extent these proposed sections would~~ Because these sections (Sections 2.13, 2.14, 2.15, and 2.18)do not deviate from the OSS proceeding, the Commission ~~declines to require~~ orders these sections ~~that would be inconsistent~~ as consistent with the order in 00-0592.

Sections 16 and 17 relate to the FMOD process that has been discussed at Issue No. 3 (TDS-28). The Commission has adopted the TDS language for the FMOD process and ~~the therefore also orders the~~ TDS requested language in Sections 16 and 17 ~~appears unnecessary~~.

Issue No. 25 (Issue TDS-107)

TDS Metrocom requests that the HEPO be modified on this issue as shown below:

D. Commission Analysis and Conclusion

Most recently this issue was visited by this Commission in Dockets 00-0027 and 00-0332, the Matter of Focal and the Matter of Level 3 Communications, Inc., respectively. The Commission determined, after considering ~~the same~~ a different approach to these issues, that FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. There is ~~no~~ significant evidence in this record that would change the Commission's prior opinion at this time. Specifically, the Commission finds that FX calls, received by FX customers will look to the network as if they were local calls. Both parties will treat them as local for rating purposes and for billing. Further, there is no practical way to segregate these calls, absent an inefficient and costly manual process. Finally, there is nothing in the record to suggest that the costs are less for terminating a call received by an FX customer as opposed to a non-FX customer when the calls are handed off at the same point of interconnection. For these reasons the language proposed by Ameritech for Section 2.7 of Appendix Reciprocal Compensation will not be included in the agreement. ~~The language proposed by Ameritech is accepted.~~

Issue No. 27 (Issue TDS-119)

TDS Metrocom requests that the HEPO be modified on this issue as shown below:

D. Commission Analysis and Conclusion

Since the parties have agreed that this issue is essentially the same issue as TDS-112, the rationale set out above is equally applicable for this issue. Accordingly, The Commission concludes that ~~Ameritech's~~ the following-language should be adopted:

For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, but not to exceed the compensation contained in an the ILEC's tariff in whose exchange area the End User is located until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located. For interstate intraLATA intercompany toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff, but not to exceed the compensation contained in the ILEC's tariff in whose exchange area the End User is located until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located.

Issue No. 29 (TDS-124)

TDS Metrocom requests that the HEPO be modified on this issue as shown below:

D. Commission Analysis and Conclusion

The Commission agrees that Ameritech's proposal is premature. If work requested by TDS proves to be unnecessary because the TDS request was inaccurate, TDS should compensate Ameritech. If, on the other hand, one source of an inaccurate request is based on inaccurate Ameritech information, Ameritech should not be entitled to recover. Therefore the Commission orders that the language proposed by TDS Metrocom be included in the Agreement for Appendix OSS Section 3.4.

Dated July 24, 2001.

By: _____

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